

**AMY CHAFFIN**

VS.

Respondent

AND

Insurance Carrier

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Both issues raised by the respondent are jurisdictional issues listed in K.S.A. 44-534a, as amended, that subject a preliminary hearing order to review by the Appeals Board.

(1) Claimant started working for the respondent on February 13, 1997, as a line worker. The job required claimant to use both hands repetitively threading insulated wire through metal tubing. Claimant testified she felt a pull in her neck the second day she was on the job. She testified she complained of the soreness to her fellow workers and to her line supervisor, Ellen Berry. However, claimant testified both her fellow workers and Ms. Berry told her such soreness was common when new employees started the job and the soreness would go away over a period of time.

Claimant's symptoms did not go away but worsened to the point she experienced numbness in her neck, shoulder, and left arm. Finally, on February 27, 1997, claimant left work at noon because she could no longer perform the repetitive work activities due to pain and discomfort. Although claimant testified she told everyone about her pain and discomfort, she also testified, when she left her employment, she did not realize that her problems were work related.

The Administrative Law Judge granted claimant's request for medical treatment and payment of past medical expenses as authorized medical expenses. At the conclusion of the preliminary hearing, the Administrative Law Judge announced he found claimant's injury was caused by her repetitive work activities she performed while working for the respondent. The Administrative Law Judge also found, although claimant did not give respondent notice of the accident within ten days, she had just cause for failure to give such notice.

The respondent argues claimant failed to prove she suffered a work-related injury. The thrust of respondent's argument is that claimant suffered a neck and back injury at home some three to four weeks before she was employed by the respondent. However, claimant established her present symptoms were not the same or in the same location as the symptoms were when she was injured at home. Additionally, claimant testified that she had received medical treatment for the injury she sustained at home and that the symptoms had subsided before she commenced her employment with the respondent. The respondent presented no medical evidence to substantiate its theory that claimant's present neck, shoulder, and arm problems were related to the home accident.

The Appeals Board finds claimant's testimony coupled with Dr. Philip A. Ryan's medical report dated April 18, 1997, which was admitted into the record, support the Administrative Law Judge's conclusion that claimant's repetitive work activities were the cause of claimant's current symptoms. Claimant testified her neck first became symptomatic the second day she was at work and then the symptoms worsened as she continued to perform her daily work activities. Further, claimant testified her symptoms worsened to the point she had to leave work on February 27, 1997. After she terminated

her employment with respondent, claimant sought treatment on her own on April 2, 1997, with Dr. Ryan of Hays, Kansas. In a report dated April 18, 1997, Dr. Ryan attributes claimant's complaints of pain in her neck, across her shoulder, and her left arm to the repetitive work activities she had to perform while she was employed by the respondent. Thus, the Appeals Board affirms the Administrative Law Judge's finding that claimant's accidental injury arose out of the course of employment with the respondent .

(2) K.S.A. 44-520 requires the employee to give the employer notice of accident within ten days thereof or show just cause within 75 days after the accident for not giving the ten day notice. Claimant admitted she did not give the respondent notice that her work activities had caused her injury until she was examined by Dr. Ryan on April 2, 1997. Claimant testified she had not realized her work activities had caused her problems until Dr. Ryan expressed his opinion on the causation of the problems. After she was examined by Dr. Ryan, claimant testified she immediately notified Mr. Robinson, respondent's president, that she had suffered a work-related injury.

The Appeals Board finds the Administrative Law Judge's conclusion that the claimant had just cause for not giving the respondent notice of accident within ten days should be affirmed. The Appeals Board finds it is reasonable that claimant did not relate her work activities to her injury until the connection was made by Dr. Ryan. Claimant testified since everyone had indicated to her that soreness for a new employee was a common occurrence she finally came to the conclusion she simply could not perform the job and terminated.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated October 16, 1997, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1997.

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BOARD MEMBER

c: Jeffrey E. King, Salina, KS  
Joseph W. Jeter, Hays, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director